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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION
HONORABLE ANDREW J. GUILFORD, U.S. DISTRICT JUDGE

DONALD WAKEFIELD,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	
IGOR OLENICOFF, et al.,)	8:12-cv-02077-AG-RNB
)	
Defendants.)	
)	

REPORTER'S TRANSCRIPT OF
MOTION HEARING
MONDAY, MARCH 24, 2014
10:46 A.M.
SANTA ANA, CALIFORNIA

DEBBIE HINO-SPAAN, CSR 7953, CRR
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1 **SANTA ANA, CALIFORNIA; MONDAY, MARCH 24, 2014**

2 **10:46 A.M.**

3 - - -

4 THE COURTROOM DEPUTY: Item No. 5, SACV-12-2077,
10:46AM 5 Donald Wakefield versus Igor Olenicoff, et al.

6 Do you want to call it with No. 6?

7 THE COURT: Yes.

8 THE COURTROOM DEPUTY: Item 6, SACV-12-2094, John
9 Raimondi versus Igor Olenicoff.

10:47AM 10 MS. AULT: Julie Ault and Leslie Vandale for the
11 defendants.

12 MR. KUZNETSKY: Good morning, Your Honor. Michael
13 Kuznetsky for plaintiffs.

14 THE COURT: All right. So Mr. Kuznetsky, you
10:47AM 15 received our tentative. Let's hear from you. Let me say, your
16 papers don't cite much law. And the law cite isn't the right
17 law. I'd say about 90 percent of folks seeking leave to amend
18 their Answer never focus on Rule 16 when Rule 16 applies. Your
19 reference to Rule 15 and the liberality of Rule 15 is not the
10:47AM 20 accurate reference after the time to amend passes.

21 So I could have used a little more authority. I could
22 have used a little more analysis under Rule 16 instead of
23 Rule 15, but it's -- it is an error that is always made in this
24 context. So focusing now on Rule 16, not just Rule 15, I look
10:48AM 25 forward to hearing your argument.

1 MR. KUZNETSKY: Thank you, Your Honor. What I would
2 like to focus the Court's attention on and request that it
3 reconsider its tentative as to one of the four defendants or
4 prospective defendants, which is Realty Services Corp., in Igor
10:48AM 5 Olenicoff's verified interrogatory responses in July 2013, he
6 provided answers to questions about his acquisition of the
7 at-issue sculptures.

8 And in the case of Donald Wakefield, that includes the
9 sculptures entitled "Human Nature's Many Faces." Based on that
10:48AM 10 representation, it was plaintiff's understanding that he had
11 acquired or owned the sculptures. It wasn't until later, his
12 deposition in January, that it came out in contradiction to
13 those responses that Mr. Olenicoff never acquired those
14 sculptures, but, in fact, Realty Services Corp. paid for those
10:49AM 15 and continues to own them to this day, and that Realty Services
16 Corp. paid for the other sculptures in both cases, but does not
17 currently own them.

18 So this potentially makes Realty Services Corp. a direct
19 infringer in these matters. Unlike the property ownership of
10:49AM 20 the other three prospective defendants, the ownership of the
21 sculptures is not public record, is not something plaintiff
22 could have discovered other than through the discovery process
23 with defendants. So I think there would be a great amount of
24 prejudice if this defendant --

10:49AM 25 THE COURT: What about the prejudice to the

1 defendant if he came on board and faced a trial in two or three
2 months? That would be kind of prejudicial to that defendant,
3 wouldn't it?

4 MR. KUZNETSKY: It would but for the fact that per
10:50AM 5 the court's scheduling order under -- in exceptional
6 circumstances, the trial dates and pretrial deadlines can be
7 continued. And I think it's a matter of weighing the
8 prejudices here of letting a direct infringer walk away versus
9 inconveniencing the parties.

10:50AM 10 THE COURT: This case was filed in 2012; right?

11 MR. KUZNETSKY: Correct, Your Honor.

12 THE COURT: So boy, it strikes me that this is a
13 case that shouldn't be taking this long to get the discovery
14 done and get to trial. This is a case, if you filed it in
10:50AM 15 2012, it should have been tried in 2013. And yet we're aiming
16 for mid-2014. And I think that's more than enough time to get
17 the parties together and get the discoveries done. And I -- I
18 just don't think that it's fair and -- just to be adding
19 parties at this stage.

10:51AM 20 MR. KUZNETSKY: Just to comment on that one point.

21 THE COURT: Sure.

22 MR. KUZNETSKY: We've been asking for deposition
23 dates from the defendants for months, and we're continually
24 told that Mr. Olenicoff is tied up in trials, is out of state.

10:51AM 25 THE COURT: Let me tell you something. That happens

1 in every case. I can't -- I don't think I can recall a case in
2 my 30 years of being a trial lawyer having a -- well, there
3 probably were cases, but the -- the rule is that it's difficult
4 to get your deposition, and people are busy, and you set your
10:51AM 5 schedules. And that means you got to start the process early,
6 and you got to start it early enough to bring motions to
7 compel.

8 And the thought when we set our trial dates is that you'll
9 get out there, you'll do your motions to compel, you'll do your
10:51AM 10 deposition. And when it comes up to the trial, you'll say,
11 "Oh, you didn't give us the date" and "He's out of town." That
12 always happens. You got to bring your motions to compel. Get
13 all your ducks lined up.

14 I think I was fairly generous in setting a trial at least
10:52AM 15 a year and a half after the case was filed. And the case isn't
16 really complex as to facts. So when you say, "Oh, gee, they're
17 not giving us the discovery," that's what always happens. And
18 if I grant a trial continuance every time someone had
19 difficulty getting depositions, I'll be granting trial
10:52AM 20 continuance in most cases, don't you think?

21 MR. KUZNETSKY: Yes, Your Honor. But in this
22 instance we have a misleading and untrue statement and verified
23 interrogatory responses that we reasonably relied upon. And
24 it's the delay between getting that answer and then later the
10:52AM 25 contradictory testimony in the deposition that is pertinent as

1 to this particular defendant.

2 THE COURT: Okay. Let's hear from the defense.

3 MS. VANDALE: Thank you, Your Honor.

4 THE COURT: Was there a misstatement in the

10:53AM 5 interrogatories?

6 MS. VANDALE: Your Honor, I'd like to point out that
7 this information was not submitted with any supporting evidence
8 with the moving papers, so defendants did not have an
9 opportunity to respond to it in our position.

10:53AM 10 THE COURT: So you don't know whether there was a
11 misstatement in the interrogatories?

12 MS. VANDALE: As I stand here today, I'm not
13 absolutely certain of that. I can tell Your Honor that with
14 respect to the potential requested additional defendant, Realty
10:53AM 15 Services Corporation, plaintiff had knowledge of this
16 particular entity well before the lawsuit was even filed.

17 And I did -- we did point that out in our opposition
18 papers showing that documents that were produced in this case
19 were in the possession of plaintiff before the lawsuit was even
10:54AM 20 filed back in 2011. Realty Services checks that were submitted
21 to the City of Brea indicating that the sculptures at issue
22 purchased by that corporation were in plaintiff's possession
23 well before the lawsuit was filed.

24 THE COURT: Okay. Anything further?

10:54AM 25 MS. VANDALE: I don't have anything else, Your

1 Honor.

2 THE COURT: All right. Anything to close,
3 Mr. Kuznetsky?

4 MR. KUZNETSKY: Just to address that one point about
10:54AM 5 the checks, they were provided with no explanatory information.
6 They were checks from Realty Services Corp. to Soho Company.
7 There was no indication as to -- that they were for purchase of
8 sculptures, related to Mr. Olenicoff or Olen Properties Corp.
9 And we tried to subpoena records from Soho Company in an
10:54AM 10 attempt to evaluate that further. And as you may recall, we
11 had an application for an Order to Show Cause Re Contempt due
12 to that company's failure to comply with our subpoena attempts.

13 THE COURT: Let me ask this: We do have a trial
14 coming up. Have you had settlement discussions?

10:55AM 15 MR. KUZNETSKY: Yes, Your Honor. We had mediation a
16 few weeks ago. And as to one of the cases, there had been some
17 settlement discussions. As to the Wakefield case, I think the
18 parties felt it was premature with the motion for summary
19 judgment pending for next Monday. At the mediator's
10:55AM 20 suggestion, we are going to be reconvening for the mediation I
21 believe that same day after the hearing.

22 THE COURT: Okay. I'll just say people always want
23 the summary judgment resolved before they get to settlement.
24 It's a speech I've given before. You may have heard it that
10:55AM 25 all good businesspeople make business decisions on

1 less-than-perfect information except lawyers. Lawyers seem to
2 want perfect information before they evaluate risks.

3 You can evaluate risks before summary judgment, save a lot
4 of fees and settle it with that uncertainty rather than face
10:56AM 5 the reality of the summary judgment. But most lawyers like to
6 wait until summary judgment is resolved. I don't think that
7 necessarily is the right approach throughout, but that's what
8 you're doing here, so good luck on your settlement. And having
9 considered your arguments, Mr. Kuznetsky, I'm not inclined to
10:56AM 10 change the tentative. So the tentative will be the ruling of
11 the court. Thank you.

12 MS. VANDALE: Thank you, Your Honor.

13 MR. KUZNETSKY: Thank you, Your Honor.

14 **(Proceedings concluded at 10:56 a.m.)**

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CERTIFICATE OF OFFICIAL REPORTER

COUNTY OF LOS ANGELES)
STATE OF CALIFORNIA)

I, DEBBIE HINO-SPAAN, FEDERAL OFFICIAL REALTIME COURT REPORTER, in and for the United States District Court for the Central District of California, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Date: September 24, 2015

/S/ DEBBIE HINO-SPAAN_

Debbie Hino-Spaan, CSR No. 7953
Federal Official Court Reporter